

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MONSANTO COMPANY and  
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

E. I. DU PONT DE NEMOURS AND CO. and  
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants.

Case No. 4:09-cv-0686 (ERW)

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT OF COUNT NINE  
FOR INVALIDITY OF THE '247 PATENT CLAIMS RECITING SEQ ID NO: 70**

Pursuant to Fed. R. Civ. P. 56, Defendants E. I. du Pont de Nemours and Co. and Pioneer Hi-Bred International, Inc. (collectively, "Defendants") move for partial summary judgment on Count Nine of the Second Amended Counterclaims, declaring as a matter of law that claims 84, 103-108, 115-119, 122-125, and 128-130 of U.S. Patent No. RE39,247 are invalid under 35 U.S.C. § 251. The grounds supporting this Motion are set forth in the accompanying Memorandum in Support. Defendants also file concurrently herewith, pursuant to E.D. Mo. Local Rule 4.01(E), their Statement of Uncontroverted Material Facts in support of their Motion.

Dated: March 19, 2012

Respectfully submitted,

**LEWIS, RICE & FINGERSH, L.C.**

By: /s/ C. David Goerisch  
Andrew Rothschild, #23145MO  
C. David Goerisch, #48418MO  
600 Washington Avenue, Suite 2500  
St. Louis, Missouri 63101  
(314) 444-7600  
(314) 241-6056 (facsimile)  
arothschild@lewisrice.com  
dgoerisch@lewisrice.com

Robert T. Haar, #30044 MO  
Lisa A. Pake, #39397 MO  
HAAR & WOODS, LLP  
1010 Market Street, Suite 1620  
St. Louis, Missouri 63101  
(314) 241-2224  
(314) 241-2227 (facsimile)  
roberthaar@haar-woods.com  
lpake@haar-woods.com

Leora Ben-Ami  
Thomas F. Fleming  
Christopher T. Jagoe  
**KAYE SCHOLER LLP**  
425 Park Avenue  
New York, New York 10022  
(212) 836-8000  
(212) 836-8689 (facsimile)  
lbenami@kayescholer.com  
tfleming@kayescholer.com  
cjagoe@kayescholer.com  
hsuh@kayescholer.com

Donald L. Flexner  
**BOIES, SCHILLER & FLEXNER LLP**  
575 Lexington Avenue, 7th Fl.  
New York, New York 10022  
(212) 446-2300  
(212) 446-2350 (facsimile)  
dflexner@bsflp.com

James P. Denvir  
Amy J. Mauser  
**BOIES, SCHILLER & FLEXNER LLP**  
5301 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
202-237-2727  
202-237-6131 (facsimile)  
jdenvir@bsflp.com  
amauser@bsflp.com

*Counsel for Defendants E.I. du Pont de Nemours and  
Company and Pioneer Hi-Bred International, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 19, 2012, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

- **Steven M. Berezney**  
steve.berezney@huschblackwell.com
- **Kurt G. Calia**  
kcalia@cov.com
- **Matthew A. Campbell**  
macampbell@winston.com
- **Scott W. Clark**  
sclark@mwe.com
- **Joseph P. Conran**  
joe.conran@huschblackwell.com
- **Todd J. Ehlman**  
tehlman@winston.com
- **Anthony J. Franze**  
Anthony.Franze@aporter.com
- **Greg G. Gutzler**  
greg.gutzler@huschblackwell.com
- **James M. Hilmert**  
jhilmert@winston.com
- **George C. Lombardi**  
glombardi@winston.com
- **Kurt A. Mathas**  
kmathas@winston.com
- **Omri E. Praiss**  
omri.praiss@huschblackwell.com
- **John J. Rosenthal**  
jrosenthal@winston.com

- **Mark A. Smith**

markasmith@winston.com

- **Steven G. Spears**

sspears@mwe.com,jjknapp@mwe.com

- **Tamara M. Spicer**

tamara.spicer@huschblackwell.com,jean.melenbrink@huschblackwell.com

- **Gail J. Standish**

gstandish@winston.com

- **Dan K. Webb**

dwebb@winston.com

\_\_\_\_\_/s/ C. David Goerisch